



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/811,154

03/29/2004

Gabriel Petta

3445-151

1119

1059

7590

10/10/2007

BERESKIN AND PARR
40 KING STREET WEST
BOX 401
TORONTO, ON M5H 3Y2
CANADA

EXAMINER

STRIMBU, GREGORY J

ART UNIT

PAPER NUMBER

3634

MAIL DATE

DELIVERY MODE

10/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/811,154

Applicant(s)

PETTA ET AL.

Examiner

Gregory J. Strimbu

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/24/05</u> . | 6) <input type="checkbox"/> Other: _____ |

In light of the applicant's comments in the response filed September 26, 2007, the rejections set forth in the Office action of July 26, 2007 can no longer be maintained. The finality of the Office action of July 26, 2007 no longer proper only because the applicant argued that the method step of integrally molding the master frame and the sash frame imparts physical properties to the master frame and sash frame. Accordingly, the finality of the previous Office action has been withdrawn so that the following Office action can be issued.

Claim Rejections - 35 USC § 112

Claims 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 is indefinite because claim 12 requires the sash frame of the frame assembly to be removed by lifting the sash frame when the sash frame is in the inverted position. Thus, when combined with claim 7 the sash frame of the frame assembly would have to be removable by either lifting the sash frame (claim 12) or lowering the sash frame (claim 7) which is clearly not possible.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

Art Unit: 3634

from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 11 of copending Application No. 11/229,839 in view of Davies. Claim 11 of copending Application No. 11/229,839 is silent, concerning, *inter alia*, upper and lower sash frame members and a pair of opposed side frame members.

However, Davies discloses a frame assembly for a window or patio door, the frame assembly comprising: a) an integrally molded unitary master frame 10 including upper and lower horizontal master frame members 15 and 16, and opposed first and second vertical jamb members 13 and 14 extending between the upper and lower horizontal master frame members; and b) an integrally molded unitary sash frame 12 slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 46 and 47, and a pair of opposed side members 11 and 45 extending vertically between the upper and lower horizontal sash frame members, a mullion 33 having glazing support details 39, screen support details 63, projections 23

Art Unit: 3634

and channels 54, 44, 56, a first sash frame interlacing configuration 78, a first cavity (not numbered, but shown in figure 2 above the sliding sash frame 12 where the reference character 77 is located) which traverses the mullion as shown in figure 6, a shoulder defined by the cut 78B as shown in figure 6, a second sash frame interlacing configuration 23 as shown in figure 2, a glider element 74.

It would have been obvious to one of ordinary skill in the art to provide claim 11 of copending Application No. 11/229,839 with a sash frame having lower sash frame members and a pair of opposed side frame members, a mullion, a sash frame interlacing configurations, and glider elements, as taught by Davies, to enable the sash frame to hold a pane of glass, to improve the strength of the master frame, to enable a user to remove the sash frame, and to enable the sash frame to slide easily between opened and closed position, respectively.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by

Arbetter (US 5189841).

Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by Arbetter.

Arbetter discloses a frame assembly comprising:

a) an integrally moulded unitary master frame 60 including upper and lower horizontal master frame members 65, 67, and opposed first and second vertical jamb members 61, 63 extending between the upper and lower horizontal master frame members;

b) an integrally moulded unitary sash frame 140 slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 141, 147, and a pair of opposed side members 143, 145 extending vertically between the upper and lower horizontal sash frame members, the sash frame being slidable between open and closed positions within the master frame; and

c) seal support elements 70 integrally moulded with the master frame for securing seals to the master frame, the seals adapted to engage the sash frame for inhibiting penetration of fluid from the an exterior environment to the an interior environment when the sash frame is in the closed position.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davies (US 5280686) in view of Kownacki et al. (US 6749797). Davies discloses a frame assembly comprising: a) a unitary master frame 10 including upper and lower horizontal master frame members 15 and 16, and opposed first and second vertical jamb members 13 and 14 extending between the upper and lower horizontal master frame members; and b) a unitary sash frame 12 slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 46 and 47, and a pair of opposed side members 44 and 45 extending vertically between the upper and lower horizontal sash frame members, a mullion 33 having glazing support details 39, screen support details 63, projections 23 and channels 54, 55, 56, a first sash frame interlacing configuration (not numbered, but comprising the portion of the master frame 10 which is removed for the installation of element 78), a first cavity (not numbered, but shown in figure 2 above the sliding sash frame 12 where the reference character 77 is located) which traverses the mullion as shown in figure 6, a shoulder defined by the cut 78B as shown in figure 6, a second sash frame interlacing configuration (not shown but comprising the portion of the guide 24 which is cut out for the insertion of element 78 when the master frame is inverted), a glider element 74. Davies is silent concerning a one-piece unitary master and sash frames.

However, Kownacki et al. discloses a method of making a master frame and a sash frame of a window comprising integrally molding the master frame 30 and the sash frame 50.

It would have been obvious to one of ordinary skill in the art to make the frames of Davies, using the integrally molding method steps, disclosed by Kownacki et al., to avoid water and air penetrating the corner joints and to increase the torsional rigidity of the frames.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Publication 2002-227551 in view of Kownacki et al. Japanese Patent Publication 2002-227551 discloses a frame assembly comprising: a) a unitary master frame including upper and lower horizontal master frame members 10 and 40, and opposed first 20 and second 30 vertical jamb members extending between the upper and lower horizontal master frame members; b) a unitary sash frame 50 slidably mounted within the master frame, the sash frame including upper and lower horizontal sash frame members 51 and 55, and a pair of opposed side members 52 and 53 extending vertically between the upper and lower horizontal sash frame members, the sash frame being slidable between open and closed positions within the master frame; and c) seat support elements 13a integrally molded with the master frame for securing seals 14a to the master frame, the seals adapted to engage the sash frame for inhibiting penetration of fluid from the exterior environment to the interior environment when the sash frame is in the closed position. It appears that Japanese Patent Publication 2002-227551 is silent concerning one-piece unitary master and sash frames.

However, Kownacki et al. discloses a method of making a master frame and a sash frame of a window comprising integrally molding the master frame 30 and the sash frame 50.

It would have been obvious to one of ordinary skill in the art to make the frames of Japanese Patent Publication 2002-227551, using the integrally molding method steps, disclosed by Kownacki et al., to avoid water and air penetrating the corner joints and to increase the torsional rigidity of the frames.

Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Publication 2002-227551 in view of Kownacki et al. Japanese Patent Publication 2002-227551 discloses a frame assembly comprising: (a) a unitary master frame including upper and lower horizontal master frame members 10 and 40, and opposed first 20 and second 30 vertical jamb members extending between the upper and lower horizontal master frame members; b) a unitary sash frame 50 slidably mounted within the master frame and movable between open and closed positions, the sash frame including upper and lower horizontal sash frame members 51 and 55, and a pair of opposed side members 52 and 53 extending vertically between the upper and lower horizontal sash frame members; (c) at least one fluid penetration flow path (not numbered, but shown between the rail 53 and the mullion 63 as shown in figures 2 and 6) extending between the external and internal environments through the frame assembly when the sash frame is in the closed position; and (d) a weather buffering mechanism provided in the at least one fluid penetration flow path and adapted to inhibit

the penetration of fluid from the exterior environment to the interior environment along the fluid penetration flow path, the weather buffering mechanism including a weather buffering chamber (not numbered, but shown in figure 6 between the rail 53 and the mullion 63) disposed in the at least one fluid penetration flow path and extending between an exterior seal (not numbered, but shown on the right hand side of figure 6 as the angled surfaces of the rail 53 and the mullion) disposed upstream of the buffering chamber and an interior seal 66 disposed downstream of the buffering chamber, an exterior drain 15, wherein the weather buffering mechanism further comprises an air reservoir (not numbered, but shown in figure 5 as the volume of air defined by the U-shaped portion of the mullion 63) substantially separated from the buffering chamber by a cover member 71, the cover member comprising apertures (not numbered, but shown in figure 6 between each element 71 of the cover member 71) therethrough, the air reservoir in fluid communication with the buffering chamber through the apertures to provide a source of generally dry air to be drawn into the buffering chamber. It appears that Japanese Patent Publication 2002-227551 is silent concerning one-piece unitary master and sash frames.

However, Kownacki et al. discloses a method of making a master frame and a sash frame of a window comprising integrally molding the master frame 30 and the sash frame 50.

It would have been obvious to one of ordinary skill in the art to make the frames of Japanese Patent Publication 2002-227551, using the integrally molding method

steps, disclosed by Kownacki et al., to avoid water and air penetrating the corner joints and to increase the torsional rigidity of the frames.

Response to Arguments

Applicant's arguments filed September 26, 2007 have been fully considered but they are not persuasive.

The applicant's comments concerning claim 2 are moot in view of the new grounds of rejection.

Regarding the applicant's comments concerning Davies failing to disclose screen support details, the examiner respectfully disagrees. The element 63 of Davies is clearly capable of supporting a screen and therefore comprises screen support details. It should be noted that the claims do not actually require the screen support details 63 to support a screen. Moreover, as pointed out by the applicant, the triangular projection 63 can support a screen fixed in place. Such a screen would not interfere with access through a door when the frame system as taught by Davies is a window as set forth in column 2, lines 48-51.

The applicant's comments concerning claims 7-16 are, for the most part, moot in view of the new interpretation of the teachings of Davies. The comments concerning the relative length are not persuasive since the doors can be installed and removed between the edges 78A and 78B. See column 7, lines 15-22. The comments concerning claim 9 are not persuasive because one cannot incorporate the disclosure into the claims. The comments concerning claim 11 are not persuasive since the

shoulder is an element which extends from the master frame. The comments concerning claims 12 and 13 are not persuasive since one could invert the horizontal members 15 and 16 of the master frame so that the sash frame interference portion would comprise removal of a portion of the rail 24 for the insertion of element 78.

With respect to the comments concerning claim 15, the glider 74, 75 takes up at least some of the second vertical clearance.

With respect to claim 16, the glider element 74, 75 is attached to element 47 which can be referred to as the upper or lower sash frame member since elements 74 and 75 are identical and symmetrically disposed with respect to the sash.

The applicant's comments concerning Japanese Patent Publication 2002-227551 failing to disclose the method of making frames via integral molding are moot in view of the new grounds of rejection.

The applicant's comment that Japanese Patent Publication 2002-227551 fails to disclose an air reservoir is not persuasive because Japanese Patent Publication 2002-227551 discloses an air reservoir as set forth in the rejection above. As noted in the rejection above the air reservoir comprises the volume of air defined by the U-shaped portion of the mullion 63 as shown in figure 5) substantially separated from the buffering chamber by a cover member 71.

The filing of the terminal disclaimer on September 26, 2007 is noted and it will be considered in due course.

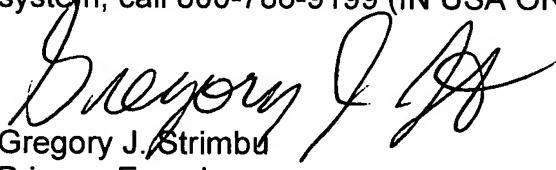
Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Gregory J. Strimbu
Primary Examiner
Art Unit 3634
October 5, 2007